From: Terrance A. Meador (B58)638-6741 GRAY CARY WARE & FREIDENRICH 436S EXECUTIVE DRIVE, SUITE 1100

SAN DIEGO, CA, 92121



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To: Examiner Steven C. Brantley (703)306-5683 U,S. Patent Office

2201 So. Park Place-Off of Petition Crystal Plaza 4, Suite 3C23 Arlington, VA, 22202



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May 2, 2002 VIA FEDERAL EXPRESS

Examiner Steven C. Brantley United States Patent Office Office of Petitions 2201 South Park Place Crystal Plaza 4, Suite 3C23 Arlington, Virginia 22202

Re: U.S. Patent Application for

THERMAL BLANKET

Serial No.: 08/419,719 - Filed April 10, 1995

Our Docket no.: AUGA01000010 Client No.: 103806-153959

Dear Examiner Brantley:

I enclose a copy of the file history of the referenced patent application for use by the United States Patent Office in reconstructing the file. If you have any questions, or if anything further is required, please contact me via telephone at 1-858-638-6747.

Thank you very much for your kind and helpful assistance in this matter.

A. Weadi

Gray Cary Ware & Freidenrich LLP

Terrance A. Meador

Reg. # 30,298

tmeador@graycary.com

TAM:rc

Enclosure

Cc: John P. Rock, Augustine Medical, Inc. (w/out enclosure)

Gray Cary\GT\6292272.1 103806-153959

SILICON VALLEY SAN DIEGO SAN FRANCISCO AUSTIN SEATTLE SACRAMENTO LA JOLLA WASHINGTON, DC

Carter, Rachel

From:

sysdeliv@esprim5.prod.fedex.com Friday, May 03, 2002 12:49 PM

Sent:

To: Subject: rcarter@graycary.com FedEx shipment 790518371817

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Page 1 of 1

From: RACHEL CARTER (859)838-6741 GRAY CARY WARE & FREIDENRICH 4365 EXECUTIVE DRIVE, BUTTE 1100

SAN DIEGO, CA, 82121



To: Examinder Steven C. Brantley (858)638-6741 **USPTO Office of Petitions**

2201 South Park Place Crystal Plaza 4, Suite 3C23 Arlington, VA, 22202 Ref: 103805-15385921140 SHIP DATE: 02MAY02 WEIGHT: 1 LBS



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Marcia

FAX TRANSMISSION COVER SHEET

December 4, 2001

<u>Io</u>:

Telephone:

Fax Number: 703-308-6916

Examiner S. Brantley

USPTO

From:

Re:

Client-Matter Number:

AUGA01000010

858-638-6747

Terrance A. Meador

Patition to Revive

U.S. Patent Application No. 08/419,719 filed 4/10/95

21 - (including this form)

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Message:

Please find following a Petition and the associated documents for the above-referenced application.

Petition dated 12/4/01

Niction of Mithdeswal from Issue (Paner No. 14) mailed 6/2/97

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> O] 858-677-1400 F1 858-638-6727

FAX TRANSMISSION COVER SHEET

December 4, 2001

To

Re:

Telephone:

Fax Number:

Examiner S. Brantley

703-308-6916

USPTO

From: Terrance A. Meador

Client-Matter Number:

AUGA01000010

858-638-6747

Petition to Revive

U.S. Patent Application No. 08/419,719 filed 4/10/95

Pages: - 21 - (including this form)

Originals: □ will be mailed □ will not be mailed

If there is a problem with this transmission, please call (858) 667-1498

Fax Operator/Ext. Marcia

Message:

Please find following a Petition and the associated documents for the above-referenced application.

- Petition dated 12/4/01
- Notice of Withdrawal from Issue (Paper No. 19), mailed 6/2/97
- Transmittal & Communication responsive to Paper No. 19, mailed 3/1/99
- Transmittal, Communication, Change of Address, IDS/1449, all dated 7/22/99
- Status Inquiry dated 9/11/00
- Three (3) USTPO stamped postcards
- Copy of Docket record

CONFIDENTIALITY NOTICE

This communication is ONLY for the person named above. Unless otherwise indicated, it contains information that is confidential, privileged or exempt from disclosure under applicable law. If you are not the person named above, or responsible for delivering it to that person, be aware that disclosure, copying, distribution or use of this communication is strictly PROHIBITED. If you have received it in error, or are uncertain as to its proper handling, please immediately notify us by collect telephone and mail the original to us at the above address. Thank you.

(Form Rev. 6/5/00)

Docket No.: AUGA01000010 Serial No.: 08/419,719 Filed: 04/10/95

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)
Scott D. Augustine et al.) Group No. 3904
Serial No.: 08/419,719) Examiner: M. Graham
Filed: 04/10/95) Docket No.: AUGA0100001
	•

For: THERMAL BLANKET

CERTIFICATION UNDER 37 CFR § 1.8

I hereby certify that this correspondence is being submitted via facsimile to the Commissioner of Fatents and Trademarks, Washington, D.C. 20231, on this date:

Date 4December 2001

Signature Limited A. Malling

Attention: Office of Petitions

BOX DAC

Assistant Commissioner for Patents

Washington, D.C. 20231

ATTN: Examiner S. Brantley

PETITION UNDER 37 CFR 1.183 FOR REVIVAL OF AN ABANDONED PATENT APPLICATION AND RECONSTRUCTION OF A MISSING FILE

The above-identified application became abandoned due to a failure by the United States Patent and Trademark Office to notify the applicant of action to be taken (if any).

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

This application was allowed by a notice of Allowance dated 02/03/97. The Issue Fee was paid by a transmittal mailed on 03/04/97. A Communication mailed on 10/21/97 informed the examiner of the entry of judgement on 09/26/97 in <u>Augustine Medical</u>, Inc., v. Gaymar Industries and in <u>Augustine Medical</u>, Inc., v. Mallinckrodt Medical, Inc. ("the litigation"). Augustine Medical, Inc. is the assignee of this application. On 11/17/97, an Information Disclosure Statement was submitted to disclose the merger of reexamination and reissue proceedings in US Patent No.

Gray Cary\GT\6266546.1 103806-153959 OCT. 4.2002 12:29PM NO.798 P.11/27

-Docket No.: AUGA01000010 Serial No.: 08/419,719 Filed: 04/10/95

5,405,371. On 06/02/97, the Office mailed Paper # 19 in this application giving notice that the application was being withdrawn from issue to reopen prosecution. A copy of that notice is enclosed. No further communication respecting the reopening of prosecution has ever been received by the applicant.

On 03/01/99, the applicant mailed a Communication requesting notice of the status of this application, noting that a filing receipt in a related application (08/859,891) indicated that this application had been abandoned. A copy of that Communication is enclosed, together with a copy of a stamped postcard showing receipt of the Communication by the Office. Except for the postcard, no response from the Office to the Communication of 03/01/99 was ever received.

On 07/22/99, the applicant submitted a Communication in this application that forwarded an Information Disclosure Statement to disclose an update in the status of the litigation. A copy of the Communication is enclosed, together with a copy of a stamped postcard showing receipt of the Statement by the Office. Except for the postcard, no response from the Office to the Communication of 07/22/99 was ever received.

The applicant submitted a Status Inquiry on 09/11/00 requesting the Office to notify the applicant of the status of this application. A copy of the Status Inquiry is enclosed, together with a copy of a stamped postcard showing receipt of the Status Inquiry by the Office. Except for the postcard, no response from the Office to the Status Inquiry of 09/11/00 was ever received.

On or about 11/12/01, the undersigned held a telephonic interview with Examiner M. Graham regarding the status of this application and seeking direction as to a course of action. The examiner, who was most helpful, consulted the Office's internal application status database and informed the undersigned that the database indicated the application was in indeed an abandoned status and that the record further indicated the file had been lost.

With the exception of the return postcards already mentioned, no paper mailed by the Office

Gray Cory\GT\6266546.1 103806-153959 Docket No.:AUGA01000010 Serial No.: 08/419,719 Filed: 04/10/95

(including a Notice of Abandonment) has been received in this application following the notice of withdrawal from issue. A copy of the docket record for this application is submitted in this regard.

In view of the lack of correspondence from the Office, the applicant has been unable to prosecute this application. If the application is, indeed, abandoned, the abandonment was both unavoidable and unintentional. However, the applicant cannot fulfill the conditions set forth in 37 CFR 1.137 for revival in either case, having no outstanding Office Action or Notice to respond to.

Accordingly, in the interest of doing justice in this case, the applicant respectfully requests that the Commissioner suspend the rules, revive the application, inform the applicant of the revival and issue an appropriate paper.

APPLICANT HEREBY PETITIONS FOR RECONSTRUCTION OF THIS FILE

If the file is lost and cannot be recovered or otherwise found, the applicant will make all file materials in its possession that are relevant to this application available for reconstruction of the file. In this regard, the applicant also petitions for reconstruction of the file.

If any fee is required, the Office is authorized to charge the fee to Deposit Account 07-1895 in the name of Gray Cary Ware & Freidenrich. In the event that the Commissioner determines that a fee is necessary, the undersigned respectfully requests notice of such.

Respectfully submitted

TERRANCE A. MEADOR

Reg. No. 30, 298

Date: 4 December 2001

GRAY CARY WARE & FREIDENRICH 4365 Executive Drive, Suite 1100 San Diego, CA 92121-2133

Telephone: (858) 638-6747 Fax: (858) 638-6727

Gray Cary\GT\6266546.1 103805-153959

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RÌY.

Baker, Maxham, Jester & Mesico:



UNITED STATES DEPARTMENT OF COMMERCE Patent and Trademark Office ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS AND TRADEMARKS Washington, D.C. 20231

Paper No.19

TERRANCE A. MEADOR BAKER, MAXHAM, JESTER & MEADOR SYMPHONY TOWERS 750 "B" STREET, SUITE 3100 SAN DIEGO, CALIFORNIA 92101

COPY MAILED

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OFFICE OF PATENT PUBLICATION

In re Application of Scott D. Augustine, et al. Application No. 08/419,719 Filed: April 10, 1995 Attorney Docket No. 1342-119

NOTICE

The purpose of this communication is to inform you that the above - identified application, which has received a patent number or an issue date, is being withdrawn from issue pursuant to 37 CFR 1.313.

The application is being withdrawn for the following purpose: to reopen prosecution. This withdrawal was requested by the Group Director. Any questions concerning this withdrawal should be addressed to the Group Director.

This application is being returned to the Office of the Director of Group 3300.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 308-5254.

Karna Cooper

Paralegal Specialist Office of the Director

Office of Patent Publication

DOCKETED

FILE #42~118

NO.798

This TISPTO date stamp	hereon will acknowledge receipt of:
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COMMUNICATION

Augustine et al Applicant:

Assignee:

Augustine Medical, Inc.

Serial No.: Filed:

08/419,719 04/10/95

Enclosures:

Transmittal Form; copies of Notice, Request Form For Filing A Patent Application Under 37

CFR 1.60, Filing Receipt; and one return

postcard. manhlago

Mailed:

TAM/jiv AUGA01000010 103806-153959

This USPTO date stamp hereon will acknowledge receipt of:

COMMUNICATION

Applicant: Assignee:

Augustine et al

Serial No.: Filed:

Augustine Medical, Inc.

08/419,719 04/10/95

Enclosures:

Transmittal Form; copies of Notice, Request Form For Filing A Patent Application Under 37 CFR 1.60, Filing Receipt; and one return

postcard.

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formation unless it displays a valid OMB control num	ber.	Application Number	08/419,719
•		Filing Date	04/10/95
		First Named Inventor	Augustine et al
TRANSMITTAL FOI	RM	Examiner Name	Graham
(to be used for all correspondence after init	iai nijng)		3304
		Group Art Unit	AUGA01000010
Total Number of Pages in This Submission		Attorney Docket Number	AUGAUTOCOTO
	ENCLOSURES	(check all that apply)	
Fee Transmittal Form Fee Attached Amendment/Response After Final Extension of Time Request Express Abandonment Request Information Disclosure Statement PTO Form 1449 (no.) cited references Certified Copy of Priority Document(s) Response to Missing Parts/ Incomplete Application PTO Form 1533 Response to Missing Parts Under 37 CFR 1.52 or 1.53		ation) ated Papers klist and g Petition pplication mey, Revocation prespondence Address claimer	After Altowance Communication to Group Appeal Communication to Board of Appeals and Interferences Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) Proprietary Information Status Letter X. Additional Enclosure(s) (please Identify below): POSTCARD
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Firm Terrance A. Meador or Reg. No. 30,298 GRAY CARY WARE &	FREIDENRICH		<u> </u>
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I hereby certify that this correspondence is being Assistant Commissioner for Patents, Washingto	g deposited with the Uni n, D.C. 20231 on this d	ited States Postal Service as firs	t class mail in an envelope addressed to:

Typed or printed name

Signature

Terrance A. Meador

enauce &

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applica	tion of:) .	
S.D. AUGUS	STINE ET AL.) Group Ai	t Unit: 3304
Serial No.:	08/419,719		
Filed:	April 10, 1995) Examine	r: M. Graham

Assistant Commissioner for Patents

THERMAL BLANKET

Washington, D.C. 20231

ATTN: Mark Graham

Sir:

For:

COMMUNICATION

On June 2, 1997, a Notice (Paper No. 19) was mailed from the Office of Patent Publication to the undersigned. A copy of the paper is attached. The purpose of the Paper was to give notice that the subject patent application was withdrawn from issue by the Office for the purpose of reopening prosecution. The Notice indicated the application was being returned to the Office of the Director of Group 3300. Since the June 2, 1997 Notice, we have received no further communication from the Patent Office regarding this matter.

On May 21, 1997, a Rule 60 Continuation was filed in this application. A copy of the Continuation Request is also attached. The Official Filing Receipt for this Continuation, copy attached, indicated that the subject application, Serial No. 08/419,719 had been abandoned. As evidenced by the Continuation Request, no abandonment was requested.

1

The undersigned respectfully requests information as to the status of this application and the location of its file.

Respectfully submitted,

Pate: 1/11/1/19

TERRANCE A. MEADOR

Reg. No. 30,298

GRAY CARY WARE & FREIDENRICH 401 B Street, Suite 1700 San Diego, California 92101

Telephone (619) 699-2652 Fax (619) 236-1048

The USPTO date stamp hereon will acknowledge receipt of:

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Applicant:

Augustine et al

Assignee:

Augustine Medical, Inc.

Serial No.: Filed:

09/419,719 04/10/95

Enclosures:

Transmittal Form; PTO Form 1449; Two (2) cited references; Change of Address; and one return

postcard: Communication

Mailed: 22 July 1999

TAM/jiv AUGA01000010 103806-153959

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SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Applicant:

Augustine et al

Assignee:

Augustine Medical, Inc.

Scrial No.:

09/419,719

Filed:

04/10/95

Enclosures:

Transmittal Form; PTO Form 1449; Two (2) cited

references; Change of Address; and one return

postcard; Communication

Mailed: 22 July 1999

TAM/jiv AUGA01000010 103806-153959

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		Examiner Name	Graham		
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	RAY CARY WARE &	A /Na			
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I hereby certify that this co	orrespondence is being or Patents, Washingto	g deposited with the Unit n, D.C. 20231 on this da	ed States Postal Service as firection as fir	st class mail in an envel	ope addressed to:
Typed or printed name	Terrance A. Meado		1		
Signature	Thomas	A Meas	//	Date	227441999

Signature

In re Application of:

S.D. AUGUSTINE ET AL.

Serial No.: 08/419,719

Filed: April 10, 1995

Croup Art Unit: 3304

Examiner: M. Graham

Docket No.: AUGA01000010

For: THERMAL BLANKET

Assistant Commissioner for Patents Washington, D.C. 20231

Sir:

REQUEST FOR CHANGE OF ADDRESS

This is to notify the Office that all correspondence in the subject matter should be addressed to;

TERRANCE A. MEADOR GRAY CARY WARE & FREIDENRICH 401 B STREET, SUITE 1700 SAN DIEGO, CALIFORNIA 92101

TELEPHONE - (619) 699-2652

Respectfully submitted,

Terrance A. Meador Reg. No. 30,298

P:\FORMS\ADDRESS.CHG

In re Application of: Group Art Unit: 3304 S.D. AUGUSTINE ET AL. Examiner: M. Graham Serial No.: 08/419,719 Docket No.: AUGA01000010 April 10, 1995

THERMAL BLANKET For:

Assistant Commissioner for Patents Washington, D.C. 20231

Dear Sir:

Filed:

COMMUNICATION

Accompanying this paper is an Information Disclosure Statement. On June 2, 1997, a Notice (Paper No. 19) was mailed from the Office of Patent Publication to the undersigned. The purpose of the Paper was to give notice that the subject patent application was withdrawn from issue by the Office for the purpose of reopening prosecution. The litigation related to the subject matter and priority of this application has now been heard on appeal by the Court of Appeals, Federal Circuit. The accompanying Information Disclosure Statement forwards a copy of the Decision on Appeal. Subsequent to the decision, Augustine Medical, Inc., the owner by assignment of this patent application, submitted a Petition For Rehearing And Suggestion For Rehearing In Banc, a copy of which is attached. As of this date, the Federal Circuit has not ruled on the Petition, but has asked that Gaymar and Mallinckrodt respond to the petition.

Respectfully submitted,

Date: 12 July 1999

Registration No. 30,298

GRAY CARY WARE & FREIDENRICH 401 B Street, Suite 1700 San Diego, California 92101

Telephone: (619) 699-2652 Fax: (619) 236-1048

In re Application of:

S.D. AUGUSTINE ET AL.

Serial No.: 08/419,719

Filed: April 10, 1995

Croup Art Unit: 3304

Examiner: M. Graham

Docket No.: AUGA01000010

For: THERMAL BLANKET

Assistant Commissioner for Patents Washington, D.C. 20231

Dear Sir:

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

In satisfaction of their duty of candor and fair dealing, the applicants hereby cite the document listed on the accompanying Form PTO-1449 with respect to the above-identified patent application under the provisions of 37 CFR, 1.97(C) and 1.17(A). The Examiner is respectfully requested to make of record this documents if deemed relevant to the examination of this application.

Respectfully submitted,

TERRANCE A. MEADOR Registration No. 30,298

GRAY CARY WARE & FREIDENRICH 401 B Street, Suite 1700 San Diego, California 92101

Date: 22 July 1999

Telephone: (619) 699-2652 Fax: (619) 236-1048

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FORM PTO-1449 INFORMATION DISCLOSURE CITATION		Applicant: Augustine et al							
IN AN APPLICATION (Use Several Sheets If Necessary)			Filing Date: 04/10/	95	Group Art Uni	t 3304			
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	<u></u>	OTI	ER DOCUM	ENTS (Inc.	luding Author, Vitle, D	ate, Pertinen	t Pages, Etc.)		
	US Court of	Appcal PR Inc	s For The Feder	al Circuit, DE odt Group, Int	CISION, coted June 8, 199 and Mallinckrodt Medic	99, Augustine 1 nl. Inc., 98- 00	Medical, Inc., vs. Gi	1 <u>ymer Industr</u> 244, -1266, Ju	es. Inc. and nc 8, 1999
	US Court of IN BANC Of Inc. and M	f Appe	pals For The F INTIFF-CROSS ICH P R. Inc. 8	cderal Circuit S-APPELLAN	t, COMBINED PETITION T AUGUSTINE MEDICA odt Group, Inc., and Ma	FOR RELEA L, INC., Aug Ninckroot Me	RING AND SUGG usting Medical In idical Ing., 94-C\	SESTION FOI C. v. Gayma /-875, 94-C	R REHEARING or Industriee. V-888, 96-
	1 3.347 4.1					V			
									
	<u></u>				DATE CONSIDE	RED			
EXAMINER	Initial if citation is co		rad whatha	r or not cit	ation is in conformat	ce with Mr	ÆP § 609; Drav	w line throu	igh citation
not in confo	Initial if citation is commence and not cons	idered	. Include co	opy of this	form with next comm	nunication t	the applicant	•	(2/92 PTC

P:WUGUSTDN153959.ID1

The USPTO date stamp here	on will acknowledge receipt of:
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Serial No.:	
Filed:	April 10, 1995
Mailed:	September / 2000 OIRE
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TAM File No.:	AUGA01-10
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Changena youresa	STATUS INQUIRY
Serial No.:	08/419,719
Filed:	April 10, 1995
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For: THERMAL BLANKET

BOX: STATUS INQUIRY

Assistant Commissioner for Patents

Washington, D.C. 20231

Dear Sir:

STATUS INQUIRY LETTER

A Notice (Paper No. 19 mailed June 2, 1997) was sent from Ms. Karna Cooper informing that the subject application was being withdrawn from issue. Since that date no Correspondence has been received from the United States Patent and Trademark Office.

The applicants respectfully request the status of this case.

Respectfully submitted,

Date: 11 September 2000

TERRANCE A. MEADO! Attorney for Applicant Registration No. 30,298

GRAY CARY WARE & FREIDENRICH 401 B Street, Suite 1700 San Diego, California 92101

Telephone: (619) 699-2652 Fax: (619) 699-3952

P-\CLARE\STATUS.IN1

Country Application

19-Nov-01

Docket Number: AUGA01000010

Country: US

SubCase:

Client: Augustine Medical, Inc.

United States of America

Client Ref.: 103806

Case Type: CON Application Status: Pending

Area(s): Entity: SE

Application Number: 08/419,719

Filing Date: 10-Apr-1995

Issuc Date:

Patent Number: **Publication Number:**

Publication Date:

Priority Number: 07/638,748

Priority Date: 08-Jan-1991

Examiner/Agent:

Expiration Date:

Examiner/Agent Ref. #:

Paralegal:

Matter Number: 153959

Tax Start Date:

Legacy Docket #: 1342-119

Ann. Serv. Status:

List Of Actions

Action(s) Due	Due Date		Action Taken
Information Disclosure Strant	10-Jul-1995	Due Date	08-Aug-1995
Information Dis Follow Up Date	08-Feb-1996	Due Date	08-Aug-1995
Foreign Filing Reminder	10-Feb-1996	Due Date	10-Apr-1996
Foreign Filing Due	10-Apr-1996	Final	10-Apr-1996
Application Status Check	10-Oct-1996	Due Date	10-Oct-1996
Foreign Filing Follow Up Date	10-Oct-1996	Due Date	10-Арг-1996
Application Sta Follow Up Date	10-Apr-1997	Due Date	10-Oct-1996
Communication	01-Mar-1999	Due Date	01-Mar-1999
Status Check	01-Jun-1999	Due Date	22-Jul-1999
Communication w/IDS	22-Jul-1999	Due Date	22-Jul-1999
Communication Follow Up Date	01-Sep-1999	Due Date	01-Mar-1999
Communication w Follow Up Date	22-Jan-2000	Due Date	11-Sep-2000
Status Check Follow Up Date	22-Jan-2000	Due Date	22-Jul-1999
Status Inquiry	11-Sep-2000	Due Date	11-Sep-2000
Status Inquiry Follow Up Date	11-Sep-2001	Due Date	11-Sep-2001

Status Comments: Con. Of 07/638,748

Country Application

19-Nov-01

User ID: JVAIL

Date Created: 22-Jul-1998
Last Update: 16-Apr-1999